FILE COPY

Office-Supreme Court, U.S.
FILED
OCT 7 1960
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1960

No. 199

DONALD L. GRABLE, as Administrator with the Will Annexed of the Estate of SIDNEY L. BEACH, also known as S. L. BEACH and SIDNEY BEACH, deceased, substituted as party plaintiff in the place and stead of SIDNEY L. BEACH,

Plaintiff and Appellant,

vs.

G. W. GRABLE and LOUISE GRABLE, etc.,

Defendants, Cross-Complainants, and Appellants,

CITIZENS NATIONAL TRUST AND SAVINGS BANK OF RIVERSIDE, CALIFORNIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, State of California, Second Appellate District.

BRIEF OF RESPONDENTS IN OPPOSITION.

RODNEY K. POTTER,
433 South Spring Street,
Los Angeles 13, California,
HAROLD W. KENNEDY,
1100 Hall of Records,
Los Angeles 12, California,
County Counsel of Los Angeles County,
Attorneys for Respondents.

ROBERT A. VON ESCH, JR.,
1100 Hall of Records,
Los Angeles 12, California,
Deputy County Counsel,
F. W. AUDRAIN,
530 West Sixth Street,
Los Angeles 14, California,
JACK M. LASKY,
2140 Westwood Boulevard,
Los Angeles 25, California,
O'MELVENY & MYERS,
433 South Spring Street,
Los Angeles 13, California,
Of Counsel.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	PAGE
Opinions below	1
Questions presented	1
Statement	2
Argument	4
1. No substantial federal question is presented	4
2. The petition does not show that the federal question was properly raised in the state court proceedings	4
3. The decision below is clearly correct	5
Conclusion	6

TABLE OF AUTHORITIES CITED

CASES	PAGE
Chicago Life Ins. Co. v. Cherry, 244 U. S. 25	4
Radio Station WOW v. Johnson, 326 U. S. 120	5

STATUTES	
Federal Rules of Civil Procedure, Rule 23(1)(c)	5
United States Constitution, Fourteenth Amendment	3, 4, 5

TEXTBOOK	
50 Corpus Juris Secundum, p. 25	6

IN THE

Supreme Court of the United States

October Term, 1960

No. .....

DONALD L. GRABLE, as Administrator with the Will Annexed of the Estate of SIDNEY L. BEACH, also known as S. L. BEACH and SIDNEY BEACH, deceased, substituted as party plaintiff in the place and stead of SIDNEY L. BEACH,

Plaintiff and Appellant,

vs.

G. W. GRABLE and LOUISE GRABLE, etc.,

Defendants, Cross-Complainants, and Appellants,

CITIZENS NATIONAL TRUST AND SAVINGS BANK OF RIVERSIDE, CALIFORNIA, *et al.*,

Respondents.

On Petition for a Writ of Certiorari to the District Court of Appeal, State of California, Second Appellate District.

BRIEF OF RESPONDENTS IN OPPOSITION.

Opinions Below.

The opinion of the court below is reported 180 A. C. A. 2d 301. It is attached to the petition as Appendix A.

Questions Presented.

Does the decision of the court below present any substantial federal question under the due process clause of the Fourteenth Amendment, and was such federal question properly raised in the state court proceedings?

Statement.

The opinion of the District Court of Appeal of the State of California, Appendix A to the petition herein, clearly states the facts of this litigation. While these facts are somewhat complicated, the legal situation presented to the court and determined by it was relatively simple. It involved merely the application of well-known principles of *res judicata* to determine which of two claimed prior adjudications should be held controlling. Petitioners depended upon a "Memo of Ruling" and Civil Minute Order embodying it[1] (Appendices C and D to Pet.), whereas respondents relied upon a prior decision of the District Court of Appeal of the State of California (Appendix B to Pet.). A matter in issue was the validity of a trust and the Memo of Ruling and Minute Order expressed the view that it was invalid, whereas the opinion of the District Court of Appeal upheld its validity.

The court decided the issue in favor of respondents on the basis of its determination that the Memo of Ruling and Minute Order relied upon by petitioners "was not intended to be, and was not, a final judgment" (Pet. App. A, 8) and, further, that it could not in any event be *res judicata* against respondents inas-

---

[1]Petitioners refer to this Memo and Order as a "judgment . . . entered in the permanent minutes" (Pet. p. 7) despite the court's holding (Appendix A to Pet. p. 8) that it was not a judgment. They make no attempt, however, to demonstrate that the holding is incorrect.

much as they were not parties to the action at the time it was made. The prior decison of the District Court of Appeal, however, was found to comply with all the requirements for *res judicata* and to dispose of the issue between the parties. In so deciding, the court applied well established California law as to the requirements for rendition of judgment and universally accepted standards as to the conclusiveness of judgments.

Petitioners seek review in this Court, claiming a denial of due process. They have not shown, however, that the decision below raises any substantial question under the due process clause of the Fourteenth Amendment to the Constitution of the United States nor that they properly presented any such question in the state court proceedings. In any event, it is apparent from a mere reading of the opinion below that the decision is clearly correct. This case does not warrant review in this Court.

ARGUMENT.

1. No Substantial Federal Question Is Presented.

The determination of conflicting claims of *res judicata* under state law involves no denial of due process under the due process clause of the Fourteenth Amendment even if it is erroneous.

In *Chicago Life Ins. Co. v. Cherry*, 244 U. S. 25 (1917), the claim was made that a state court's allegedly erroneous decision as to the conclusiveness of a former judgment deprived the defendant of due process. Speaking for the court, Justice Holmes said:

> ". . . But a mere mistake of that kind is not a denial of due process of law. *Pennsylvania Fire Insurance Co. v. Gold Issue Mining & Milling Co.*, 243 U. S. 93, 96. Whenever a wrong judgment is entered against a defendant his property is taken when it should not have been, but whatever the ground may be, if the mistake is not so gross as to be impossible in a rational administration of justice, it is no more than the imperfection of man, not a denial of constitutional rights. . . ." (p. 30).

As will hereinafter appear, there is nothing about the decision of the court below which is incompatible with a rational administration of justice; no denial of due process of law is, therefore, involved.

2. The Petition Does Not Show That the Federal Question Was Properly Raised in the State Court Proceedings.

An examination of the opinion below reveals no mention whatever of any federal constitutional question. Petitioners state that "the constitutional issues here pre-

sented were urged in the lower court." (Pet. 2). The petition does not, however, in compliance with Rule 23(1)(f), attempt to specify the manner in which petitioners claim the federal question to have been raised nor make any specific reference to the places in the record where such matter appears. General reference is made to the certified record and to the briefs. An examination of these documents, however, reveals that the first time any mention is made of the Constitution of the United States or of the Fourteenth Amendment is in the petition for rehearing herein in the District Court of Appeal. This, of course, was insufficient. *Radio Station WOW v. Johnson*, 326 U. S. 120, 128.

3. The Decision Below Is Clearly Correct.

The Memo of Ruling and Minute Order relied upon by respondents was denied conclusive effect by the District Court of Appeal of the State of California for two reasons. Both of these reasons were good and sufficient. The first reason the Memo of Ruling and Minute Order was denied conclusive effect was that it evidenced on its face, by the use of the language 'the court is now prepared to hold," that it was merely an opinion of the judge and not a final judgment. It is essential to the orderly administration of justice that only final judgments be *res judicata*; otherwise, every expression of opinion by a judge would be irrevocable. The requirement of finality is certainly not inimicable to the "rational administration of justice."

The second basis for denial of conclusive effect to the Memo of Ruling, the fact that respondents were not parties to the action when it was made, is equally sound. This requirement for *res judicata* is universally applied

and its reasonableness can scarcely be questioned. (50 C. J. S. 25).

The District Court of Appeal's determination that the prior decision of that court was conclusive upon petitioners is also correct. The portion of the opinion dealing with this matter (Pet. App. A, 9-12) makes this clear, and petitioners have not advanced any opposing argument except their claim that the conflicting Memo of Ruling and Minute Order must be held conclusive.

Conclusion.

It is apparent that the Petition does not present any substantial federal question properly raised in the state court, and that the decision below is clearly correct. Furthermore, the questions which are presented relate to a unique factual situation and are not likely to recur. The case therefore has no special importance in any event. The Petition for Certiorari should be denied.

Respectfully submitted,

RODNEY K. POTTER,
HAROLD W. KENNEDY,
County Counsel of Los Angeles County,
Attorneys for Respondents.

ROBERT A. VON ESCH, JR.,
Deputy County Counsel,
F. W. AUDRAIN,
JACK M. LASKY,
O'MELVENY & MYERS,
Of Counsel.